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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/585,521

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Udo Bernhardt

GOTZF 156

7952

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7590

02/03/2010

KREMBLAS, FOSTER, PHILLIPS & POLLOCK
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EXAMINER

NGUYEN, THUKHANH T

ART UNIT

PAPER NUMBER

1791

NOTIFICATION DATE

DELIVERY MODE

02/03/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/585,521	Applicant(s) BERNHARDT, UDO	
	Examiner Thu Khanh T. Nguyen	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-48 is/are pending in the application.
- 4a) Of the above claim(s) 25-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 34-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>translation of DE 100 29 171 A1</u> |

DETAILED ACTION

Applicant Initiated Interview Request

1. A request for an interview has been reviewed and several interviews/communications had been conducted during December 18 and December 30, 2009. However, an agreement between the attorney and the examiner had not been reached, thus, those amendments that were proposed during these communications were not entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 35, 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 10029171 reference.

The DE reference teaches a pretzel production system, comprising a shaping table (2) with activatable shapping tool (5) forming a common shaping stop, a tying head (24) with a pair of gripper (15) for gripping, moving and streaching both ends (36b) of a dough strand in and against the conveyance direction (36; translation, page 5-6), and controllable looping means (14-17, 22, 29, 30) connected to a controller for controlling the movement of the positioning means (3-5) and the gripping means (34, 35).

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In regard to claims 37-39, wherein the DE reference further comprises position sensors (20, 21) on the shaping table (2) for monitoring the position of the ends of the dough strand on the conveyor belt (18).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 36, 40-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art (pages 1-7 of the specification) which also is the DE 10029171 (the translation copy is attached) in view of Hemmerich (5,492,708).

The admitted prior art (or the DE reference) discloses an apparatus for manufacturing pretzels, comprising a shaping table with U-shape shaping tool and a tying head for grasping the dough strand ends and tying the dough strand, wherein the tying head includes gripping devices (39, 40) and actuator device (5) for controlling the position and/or tying of the dough strand, wherein the tying head is capable of moving from a gripping position to a stretching position (translation, the bridging paragraph between page 5 and page 6).

In regard to claim 36, Hemmerich discloses a stepper motor (31x-z) connected to a linear drive unit for controlling the movement of the gripper system relative to the position of the dough strand (col. 6, lines 24-38). It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the DE reference by providing a steppe

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motor connecting to a gripper drive unit as taught by Hemmerich in order to regulate the movement of the grippers during the process.

In regard to claims 40 and 44, the DE reference further discloses sensors (20, 21) for measuring the position of the dough strand (36) on the shaping table (2), wherein the sensors (20, 21) disposed above the deflection sheaves (Fig. 2) around which the conveyors (3, 4) pass and on the sides of the shaping table (2).

In regard to claims 41-42, the DE reference further discloses that tying head is movable from the stretching position into a tying position and to a depositing position (Figs. 2-6).

In regard to claims 43, the DE 10029171 reference further discloses a plurality of movable shaping pins (5).

In regard to claim 46, wherein the tying head (9) further comprises a rotary drive (26) connected to a control unit (see abstract of the DE reference) for rotating the tying head 360° (Fig. 1, 22).

In regard to claims 47-48, Hemmerich further discloses a rotation system for rotating the twisting the dough strand forming pretzels (Figs. 2A-2D), wherein the rotation system is connected to the programmable controller to govern the speed of rotation, angle and/or timing of the rotating drive unit according to the varying demands of productions (col. 4, lines 5-14). It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the DE reference by programming the controller as taught by Hemmerich in order to control the regulate the rotation of the dough grippers, such as the speed of rotation, angle and/or timing of the rotating drive unit depending on the demands of the forming pretzels.

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Response to Arguments

6. Applicant's arguments filed 11/09/09 have been fully considered but they are not persuasive. The applicants have alleged that the DE 10029171 reference fails to disclose a typing head that is capable of moving the dough strand for stretching purpose. However, a translation of DE'171 reference discloses that the gripping means are capable of holding the ends of the dough strand and move these ends in and against the conveyance direction, for purpose of stretching or transport (translation, page 6, lines 1-5).

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is (571) 272-1136. The examiner can normally be reached on 7:30am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TN

/Richard Crispino/
Supervisory Patent Examiner, Art Unit 1791